What Turned Mr. McLaren Around?

When Solicitor General Erwin N. Griswold says that the settlement of the ITT antitrust case was a "very substantial victory for the government," he may be right, if what he means is that there was a reasonable compromise which resulted in a sizable divestiture on the part of ITT; if you assume, as Mr. Griswold does, that the Justice Department was likely to lose the case in the end, leaving the ITT conglomerate intact, the settlement looks even more favorable to the government. And if that is so, then one may well ask why there would even be talk of a possible payoff by ITT in the form of a major contribution to the cost of this year's Republican Convention in San Diego. Having lost, why would ITT pay off? Without attempting to judge at this point whether, in fact, there is a connection between the convention financing and the out-of-court settlement of the antitrust suit, the explanation for why some people might suspect that there is one lies in the fact that the settlement was also favorable to ITT.

This, in short, is the crux of this affair: if the settlement can be said to have been in the larger interests of the government, it was also, as is so often the case in these matters, in the interests of ITT; the real loser, it becomes increasingly clear, was Mr. Richard McLaren, then head of the Justice Department's antitrust division, and an understanding of the way in which he lost is crucial to the central issue of the ITT affair, which is what, or who, caused Mr. McLaren to abandon his main purpose in bringing action against ITT, and to settle out of court. As the Wall Street Journal explained his main purpose, in an excellent account of the background of the ITT case the other day, the three suits against ITT and an earlier suit against Ling-Temco-Vought, Inc. (also settled out of court, in 1970) "were to have been Mr. McLaren's vehicles for gaining from the Supreme Court a highly significant expansion of the Clayton Antitrust Act." The Journal analysis continues:

> *"When Mr. McLaren was named to head the antitrust division in 1969, his first priority was to halt the acquisition by huge conglomerates of leading companies in the steel industry and other industries. The campaign drew wide attention not only because of the magnitude of the ITT and LTV suits, but also because Democratic heads of the Antitrust Division had insisted the Clayton Act didn't apply to such conglomerate mergers, prompting much talk about whether Congress should pass a new antitrust law. Mr. McLaren urged Congress not to do so, and it didn't, pending the determination of his lawsuits. The suit against ITT's acquisition of Grinnell (one of the three suits involving ITT) already was at the Supreme Court when the package settlement concluding all three suits against ITT was signed."*

So there was this Republican trust-buster, trying to get the Supreme Court to write new law against conglomerate mergers and what makes the history of his efforts with respect to ITT and LTV all the more intriguing is that, by his own account, both met almost precisely the same fate: in both cases, White House aide Peter Flanigan stepped in and produced a financial expert to argue against the divestitures which Mr. McLaren was trying to bring about by court action; in both cases the expert in question was Richard J. Ramsden, who recently spent a year as a White House fellow and now works for a New York investment firm. That is to say that in both cases, Mr. McLaren somehow was persuaded to go beyond his own antitrust division, and outside the rest of the United States government, to seek the advice of a private expert, furnished by the White House—and then to abandon the main objective which had caused him to bring suit in the first place.

This is the heart of the ITT affair, rather than the question of who won the case. Surely, the U.S. government gained something, if you believe, with Mr. Griswold, that the Supreme Court would have ruled against the government. But Mr. McLaren did not believe the case would have been lost; although he hedged on this point before the Judiciary Committee this week, last December he told this newspaper in a taped interview: "I think without question we'd have won them." Clearly ITT special counsel Lawrence Walsh also thought the government was going to win; he said as much in an April 16, 1971 letter to Richard Kleindienst, which urged that the Justice Department reconsider, with other government agencies, the economic consequences of a Supreme Court ruling against ITT. It was this view of Mr. Walsh's, presumably, that encouraged ITT to seek an out-of-court settlement; in particular, ITT wanted to negotiate an agreement which would exclude the Hartford Fire Insurance Co., the target of one of the three ITT suits, from divestiture. Or so it seemed to Mr. McLaren last December. In the same taped interview with this newspaper, he said "I think the defendants think we would have won them, too. Otherwise they wouldn't have agreed to the program of divestiture that they did agree to."

So the question isn't whether the ultimate program of divestiture was favorable to the government; it could have been, while at the same time being favorable to ITT. In any case, there is no doubt that ITT wanted an out-of-court settlement. And there can be no doubt that Mr. McLaren wanted a Supreme Court test. So it comes down to the crucial question of what, or who, turned Mr. McLaren around? And how? That is what the Senate is going to have to determine before it can confirm the nomination of Mr. Kleindienst as attorney general. For it was Mr. Kleindienst, after all, who told us categorically that the ITT settlement was "handled and negotiated exclusively" by Mr. McLaren and the evidence is already persuasive that it was not.